

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1119

Introduced by Landis, 46

Read first time January 10, 2000

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 44-3,153,
2 44-2909, and 48-446, Reissue Revised Statutes of
3 Nebraska, and sections 44-522 and 48-151, Revised
4 Statutes Supplement, 1999; to adopt the Property and
5 Casualty Insurance Rate and Form Act; to eliminate the
6 Property and Casualty Insurance Data Reporting Act and
7 the Property and Casualty Insurance Rate and Form Act; to
8 harmonize provisions; to provide severability; to provide
9 operative dates; to repeal the original sections; and to
10 outright repeal sections 44-4601 to 44-4607, 44-5001 to
11 44-5019, and 44-5021 to 44-5039, Reissue Revised Statutes
12 of Nebraska, and section 44-5020, Revised Statutes
13 Supplement, 1999.
14 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 35 of this act shall be known
2 and may be cited as the Property and Casualty Insurance Rate and
3 Form Act.

4 Sec. 2. The purposes of the Property and Casualty
5 Insurance Rate and Form Act are:

6 (1) To prohibit price-fixing agreements and other
7 anticompetitive behavior by insurers;

8 (2) To protect policyholders and the public against
9 excessive rates and the adverse effects of inadequate or unfairly
10 discriminatory rates;

11 (3) To regulate insurance contracts so they: (a) Are not
12 unjust, unfair, ambiguous, inconsistent, inequitable, misleading,
13 deceptive, or contrary to public policy; (b) are not written so as
14 to encourage the misrepresentation of coverage; (c) reasonably
15 provide the general coverage for policies of that type; (d) comply
16 with the provisions and the intent of the laws of this state; and
17 (e) do not provide coverage contrary to the public interest;

18 (4) To promote rates that reflect the benefits of
19 competition;

20 (5) To provide appropriate data reporting systems;

21 (6) To provide regulatory oversight in the absence of
22 competition;

23 (7) To authorize essential cooperative action among
24 insurers in the development of policy forms, prospective loss
25 costs, and other information and to regulate such activity to
26 prevent practices that tend to substantially lessen competition or
27 create a monopoly; and

28 (8) To promote the dissemination of price and other

1 information to enable consumers to purchase insurance suitable for
2 their needs and to foster competitive insurance markets.

3 Sec. 3. Nothing in the Property and Casualty Insurance
4 Rate and Form Act shall prohibit or discourage reasonable
5 competition or prohibit or encourage uniformity in policy forms,
6 rating systems, or underwriting practices except to the extent
7 necessary to accomplish the purposes of the act. The act shall be
8 liberally interpreted to carry into effect the purposes of the act.

9 Sec. 4. For purposes of the Property and Casualty
10 Insurance Rate and Form Act:

11 (1) Advisory organization means any entity, including its
12 affiliates or subsidiaries, which (a) has majority ownership or
13 control by two or more insurers and assists two or more insurers in
14 activities related to ratemaking, the promulgation of policy forms,
15 or related matters or (b) makes the same prospective loss cost or
16 policy form filings on behalf of or to be available for two or more
17 insurers. Advisory organization does not include joint reinsurance
18 pools, joint underwriting pools, or insurers engaged in joint
19 underwriting;

20 (2) Classification means the process of grouping insureds
21 with similar loss or expense characteristics so that differences in
22 losses and expenses may be recognized;

23 (3) Director means the Director of Insurance;

24 (4) Exempt commercial policyholder means an entity to
25 which specific aspects of rate or policy form regulation do not
26 apply or have been relaxed in accordance with rules and regulations
27 adopted and promulgated pursuant to section 15 of this act;

28 (5) Expense means that portion of a rate attributable to

1 acquisition, field supervision, collection expense, general
2 expense, taxes, licenses, and fees. Expense does not include loss
3 adjustment expense;

4 (6) Experience rating plan means a rating formula and
5 related procedures that use past loss experience of an individual
6 policyholder to forecast future losses by measuring the
7 policyholder's loss experience against the expected losses for
8 policyholders in that classification to produce a prospective
9 premium credit, debit, or unity modification;

10 (7) Except as provided in section 19 of this act, insurer
11 means an insurer as defined in section 44-103, except that two or
12 more insurers that are managed by the same persons or entity for
13 the underwriting of individual risks, for the pricing of individual
14 risks, or for the appointment of agents shall be considered as a
15 single insurer;

16 (8) Joint reinsurance pool means an ongoing voluntary
17 arrangement pursuant to which two or more insurers participate in
18 the reinsurance of risks written by one or more member insurers and
19 reinsured by one or more other member insurers. A joint
20 reinsurance pool may operate through an association, syndicate, or
21 other arrangement;

22 (9) Joint underwriting means a voluntary arrangement
23 established on an individual risk basis by which two or more
24 insurers jointly contract to provide coverage for an insured.
25 Joint underwriting does not include any arrangement by which the
26 participants are reinsuring the direct obligation of another
27 risk-assuming entity;

28 (10) Joint underwriting pool means an ongoing voluntary

1 arrangement pursuant to which two or more insurers participate in
2 the sharing of risks written as their direct obligations according
3 to a predetermined basis and the insurance remains the direct
4 obligation of the pool participants. A joint underwriting pool may
5 operate through an association, syndicate, or other arrangement;

6 (11) Loss adjustment expense means the expense incurred
7 by an insurer in the course of settling claims;

8 (12) Policy form means all policies, certificates, or
9 other contracts providing insurance coverage. Policy form includes
10 bonds and includes riders, endorsements, or other amendments to the
11 policy form;

12 (13) Premium means the cost of insurance to the
13 policyholder after all audit adjustments have been made and any
14 dividends payable have been subtracted;

15 (14) Prospective loss cost means that portion of a rate
16 intended to provide for expected losses and loss adjustment
17 expenses. Prospective loss costs may provide for anticipated
18 special assessments. Prospective loss costs do not include
19 provisions for profits, dividends, or expenses other than loss
20 adjustment expenses;

21 (15) Rating system means the information needed to
22 determine the applicable rate or premium including rates, any
23 manual or plan of rates, classifications, rating schedules, minimum
24 premiums, policy fees, dividend rating plans or other provisions
25 for the possible payment of dividends, payment plans, rating plans
26 or rules, anniversary rating date rules, and other similar
27 information. Rating system includes program eligibility and
28 underwriting rules, but only to the extent necessary to determine

1 the rate or premium that will be applicable if the insurer decides
2 to provide coverage;

3 (16) Special assessments means guaranty fund assessments
4 made pursuant to section 44-2407, Second Injury Fund assessments
5 made pursuant to section 48-128, Vocational Rehabilitation Fund
6 assessments made pursuant to section 48-162.02, residual market
7 assessments made pursuant to section 28 of this act or section
8 48-146.01, and similar assessments. Special assessments are not
9 expenses or losses;

10 (17) Statistical agent means an entity that, for the
11 purpose of fulfilling the statistical reporting obligations of two
12 or more insurers under the act, collects or compiles statistics
13 from two or more insurers or provides reports developed from these
14 statistics to the director; and

15 (18) Supporting information means the experience and
16 judgment of the filer and the experience or data of other insurers
17 or advisory organizations relied upon by the filer, the
18 interpretation of any other data relied upon by the filer,
19 descriptions of methods used in developing a rating system, and any
20 other information required by the director to be filed.

21 Sec. 5. (1) The Property and Casualty Insurance Rate and
22 Form Act applies to any insurer holding a certificate of authority
23 issued by the director to transact insurance business in this state
24 for the lines of insurance specified in subdivisions (5) through
25 (14) and (16) through (20) of section 44-201 and to any combination
26 of any of the foregoing on risks or operations in this state.

27 (2) The act does not apply to:

28 (a) Reinsurance, except as provided in section 25 of this

1 act for joint reinsurance pools;

2 (b) Ocean marine insurance;

3 (c) Rating systems for insurance against loss or damage
4 to aircraft or against liability, other than workers' compensation
5 and employers liability, arising out of the ownership, maintenance,
6 or use of aircraft;

7 (d) Rating systems or policy forms used for warranties or
8 service contracts;

9 (e) Rating systems or policy forms for financial guaranty
10 insurance as defined in subdivision (19) of section 44-201, except
11 that the act applies to financial guaranty coverage for loss of
12 value for motor vehicles leased or sold on credit to private
13 parties;

14 (f) Rating systems for the lines of insurance specified
15 in subdivisions (5), (7), and (18) of section 44-201 for insurance
16 written by domestic assessment associations doing business under
17 Chapter 44, article 8; and

18 (g) Policy forms or rates for contracts of suretyship,
19 except that policy forms and prospective loss costs developed or
20 filed by advisory organizations are subject to the act.

21 Sec. 6. (1) All rating systems and prospective loss
22 costs shall be filed with the director in accordance with section 8
23 of this act, except that filings for the following shall be filed
24 in accordance with sections 10 and 11 of this act:

25 (a) Insurance covering farms and ranches, including crop
26 insurance;

27 (b) Filings made by advisory organizations;

28 (c) Workers' compensation and employers liability

1 insurance;

2 (d) Medical professional liability insurance;

3 (e) Insurance in noncompetitive markets as determined
4 pursuant to section 7 of this act;

5 (f) Insurance covering risks of a personal nature,
6 including insurance for homeowners, tenants, private passenger
7 nonfleet automobiles, mobile homes, and other property and casualty
8 insurance for personal, family, or household needs;

9 (g) Liability and physical damage coverages relating to
10 the rental of private passenger automobiles on a nonfleet basis;

11 (h) Insurance written by joint underwriting pools or
12 joint reinsurance pools;

13 (i) Insurance written in an assigned risk plan; and

14 (j) Insurance covering risks of a personal nature written
15 for business entities if the costs for the insurance are charged to
16 individuals. This does not include coverage provided without a
17 separate charge by business entities for their customers.

18 (2)(a) If the director, after notice and hearing in
19 accordance with the Administrative Procedure Act, finds that an
20 insurer has made filings pursuant to section 8 of this act that
21 have failed to meet the filing standards contained in that section
22 with such frequency as to indicate a general business practice that
23 disregards the requirements of that section, the director shall
24 order that the insurer's filings be made subject to the
25 requirements of sections 10 and 11 of this act.

26 (b) Upon application by an insurer affected by an order
27 issued pursuant to subdivision (2)(a) of this section,
28 demonstrating that its filings made subsequent to the order have

1 been in compliance with section 8 of this act without the need for
2 the director to request that the original filings be amended, the
3 director shall vacate such order. The director shall consider any
4 such application within thirty days after its receipt for any order
5 that has been in effect for more than nine months since its
6 inception or since it was last reviewed by the director pursuant to
7 an application by the insurer.

8 (c) For insurers whose rating system filings that would
9 otherwise be subject to this section have been made subject to the
10 prior approval requirements of section 11 of this act through the
11 application of this subsection, the percentage rating flexibilities
12 provided in section 9 of this act shall apply to such rating system
13 filings made by such insurers once the rating system filing has
14 been approved pursuant to section 11 of this act.

15 Sec. 7. (1) The director shall monitor competition and
16 the availability of insurance in commercial insurance markets.
17 Such monitoring may include requests for information from insurers
18 regarding the lines, types, and classes of insurance that the
19 insurer is seeking and able to write. When requested by an insurer
20 with its response, the director shall keep such responses
21 confidential except as they may be compiled in summaries.

22 (2) If the director finds that a commercial insurance
23 coverage is contributing to problems in the insurance marketplace
24 due to excessive rates or lack of availability, the director shall
25 report this finding to the Legislature. Such report may be a
26 separate report or a supplement to the annual report required by
27 section 44-113.

28 (3) A competitive market is presumed to exist unless the

1 director, after notice and hearing in accordance with the
2 Administrative Procedure Act, determines by order that a degree of
3 competition sufficient to warrant reliance upon competition as a
4 regulator of rating systems does not exist in the market. In
5 determining whether a sufficient degree of competition exists, the
6 director may consider:

7 (a) Relevant tests of workable competition pertaining to
8 market structure, market performance, and market conduct;

9 (b) The practical opportunities available to consumers in
10 the market to acquire pricing and other consumer information and to
11 compare and obtain insurance from competing insurers;

12 (c) Whether long-term and short-term profitability
13 provides evidence of excessive rates;

14 (d) Whether rating systems filed under section 8 of this
15 act would frequently require amendment or disapproval if filed
16 under sections 10 and 11 of this act;

17 (e) Whether additional competition would appear likely to
18 significantly lower rates;

19 (f) Whether rates would be lowered by the imposition of
20 prior approval rating system regulation; and

21 (g) Any other relevant factors.

22 (4) If a market for a particular type of insurance is
23 found to lack sufficient competition to warrant reliance upon
24 competition as a regulator of rating systems, the director shall
25 identify factors that appear to be the cause and the extent to
26 which remediation can be achieved on a short-term or long-term
27 basis. To the extent that significant remediation can be achieved
28 consistent with the other goals of the Property and Casualty

1 Insurance Rate and Form Act, the director shall take such action as
2 may be within the director's authority to accomplish such
3 remediation or to promote the accomplishment of such remediation.

4 (5) If the director finds pursuant to a hearing held in
5 accordance with subsection (3) of this section that the lack of
6 sufficient competition warrants the application of sections 10 and
7 11 of this act to a type of insurance, an order shall be issued
8 pursuant to this section that applies sections 10 and 11 of this
9 act to the type of insurance. Such order shall expire no later
10 than one year after its original issue unless the director renews
11 the order after a hearing and a finding of a continued lack of
12 sufficient competition. Any order that is renewed after its first
13 year shall not exceed three years after reissue unless the director
14 renews the order after a hearing and a finding of a continued lack
15 of sufficient competition.

16 Sec. 8. (1) Each insurer to which this section applies
17 as provided in section 6 of this act shall file with the director
18 every rating system and every modification of such rating system
19 that it chooses to use. No insurer shall issue a contract or
20 policy except in accordance with the filings that are in effect for
21 such insurer as provided in the Property and Casualty Insurance
22 Rate and Form Act, except:

23 (a) As provided in subsections (6) and (7) of this
24 section;

25 (b) As provided by rules and regulations adopted and
26 promulgated pursuant to section 15 of this act; or

27 (c) For types of inland marine risks that have, by custom
28 of the industry, not been written according to manual rates or

1 rating plans. For types of inland marine risks for which the
2 custom of the industry has not been established, the director shall
3 consider the similarity of the new insurance to existing types of
4 insurance and classes of risk and whether it would be reasonably
5 practical to create and file rating systems prior to use.

6 (2) Every filing shall state its effective date, which
7 shall not be prior to the date that the director receives the
8 filing.

9 (3) Every filing shall provide an objective description
10 of the risks and the coverages to which the rating system will
11 apply. If the insurer has another rating system on file that
12 applies to some or all of these same risks, the filing shall
13 disclose this and shall objectively identify those risks to which
14 each rating system will apply. Filings shall include a list of
15 manual pages and other rating system elements that will be replaced
16 when the approval of a filing will result in the replacement or
17 alteration of previously filed rating systems. In addition,
18 insurers shall maintain listings of manual pages and other rating
19 system elements that have been filed with the director so that such
20 listings can be provided upon request.

21 (4) Each insurer shall file or incorporate by reference
22 to material filed with the director all supporting information
23 relating to a rating system. If a filing is not accompanied by
24 such information or if additional information is required to
25 complete review of the filing, the director may require such
26 insurer to furnish the information, and in that event the review
27 period in subsection (10) of this section shall commence on the
28 date such information is received by the director. If an insurer

1 fails to furnish the required information within sixty days, the
2 director may disapprove the filing based on the insurer's failure
3 to provide the requested information. Disapproval shall be by
4 written notice sent to the insurer ordering discontinuance of the
5 filing within thirty days after the date of notice.

6 (5) An insurer may authorize the director to accept
7 rating system filings and prospective loss cost filings made on its
8 behalf by an advisory organization. The insurer shall file
9 additional information as is necessary to complete its rating
10 systems on file with the director. At the request of the director,
11 an insurer using the services of an advisory organization shall
12 provide information necessary to determine whether the use of
13 prospective loss costs and anticipated special assessments filed by
14 the advisory organization will result in premiums that violate the
15 approval standards contained in this section or the standards
16 contained in section 10 of this act.

17 (6) A rate or premium in excess of that provided by a
18 filing otherwise applicable may be used on any specific risk upon
19 the prior written consent of the insured that describes the
20 insured's unusual or extrahazardous exposures that are not
21 otherwise contemplated by the rates on file for that class of risk.
22 Such signed consent shall be filed with the director no later than
23 thirty days after the effective date of the insurance to which it
24 applies. Insurers may not use the procedure set forth in this
25 subsection as a regular means to gain more rate flexibility than is
26 otherwise allowed by the Property and Casualty Insurance Rate and
27 Form Act. The director shall monitor such rate applications to
28 assure compliance with this subsection. The director may, after a

1 hearing, require by order that such applications for an insurer
2 that has demonstrated a pattern of using this rating device for
3 risks that do not possess unusual or extrahazardous exposures or
4 that otherwise fails to comply with this subsection shall be
5 subject to prior approval pursuant to subdivision (6)(a) of section
6 11 of this act. Upon application by an insurer affected by such
7 order, demonstrating that its filings made subsequent to the order
8 have been in compliance with this subsection, the director shall
9 vacate such order. The director shall consider any such
10 application within thirty days after its receipt for any order that
11 has been in effect for more than nine months since its inception or
12 since it was last reviewed by the director pursuant to an
13 application by the insurer.

14 (7) The director may by rules and regulations or by order
15 suspend or modify the filing requirements of this section as to any
16 type of insurance or class of risk for which rating systems cannot
17 practicably be filed before they are used. In making this finding,
18 the director shall ascertain whether a system of rating
19 classifications and exposure bases that would equitably reflect the
20 differences in expense requirements and expected losses between
21 individual risks has been developed or appears reasonably capable
22 of being developed. The director may examine insurers as is
23 necessary to ascertain whether any rating systems affected by such
24 rules and regulations meet the standards contained in this section
25 and in section 10 of this act.

26 (8) All filings and any supporting information provided
27 pursuant to this section shall be open to public inspection upon
28 their receipt, except that correspondence specifically relating to

1 individual risks shall be confidential and may not be made public
2 by the director except as may be compiled in summaries of such
3 activity.

4 (9) The director shall review filings as soon as
5 reasonably possible after they have been submitted. The director
6 shall disapprove a filing if:

7 (a) The filing proposes a rating system that would
8 produce inadequate premiums. A premium level is inadequate if it
9 would endanger the solvency of the insurer. A premium level that
10 would not be expected to generate a profit on a direct basis and
11 that would be likely to have the effect of diminishing competition
12 is also inadequate. A premium level that does not endanger the
13 solvency of the insurer and is not likely to have the effect of
14 diminishing competition is not inadequate;

15 (b) The insurer has more than one rating system
16 applicable to the line or type of insurance and the insurer fails
17 to specify objective differences between risks to determine the
18 risks and the coverages to which the rating system will apply;

19 (c) The filing proposes to discriminate between risks
20 based on optional commission differences for agents;

21 (d) The filing proposes to discriminate between risks
22 based on race, creed, national origin, or religion of the insured;

23 (e) The filing would violate the Unfair Discrimination
24 Against Subjects of Abuse in Insurance Act; or

25 (f) The filing discriminates between risks based on
26 subjective factors, except that an experience rating plan may use
27 loss reserves without being considered as subjective.

28 (10) Within thirty days after receipt, the director shall

1 disapprove a filing that requires disapproval pursuant to
2 subsection (9) of this section, except that this review period may
3 be extended for an additional period not to exceed thirty days if
4 the director gives written notice within the original review period
5 to the insurer. A filing shall be deemed to meet the requirements
6 of this section unless disapproved by the director within the
7 review period or any extension thereof.

8 (11) If, within the review period provided by subsection
9 (10) of this section or any extension thereof, the director finds
10 that a filing does not meet the requirements of subsection (9) of
11 this section, a written disapproval notice shall be sent to the
12 insurer. Such notice shall specify in what respects the filing
13 fails to meet these requirements and order discontinuance of the
14 filing within thirty days after the date of notice.

15 (12) An insurer whose filing is disapproved may, within
16 thirty days after receipt of a disapproval notice, request a
17 hearing in accordance with section 32 of this act.

18 (13) If, at any time after the expiration of the review
19 period provided by subsection (10) of this section or any extension
20 thereof, the director finds that a rating system or modification
21 thereof does not meet or no longer meets the requirements of
22 subsection (9) of this section, the director shall hold a hearing
23 in accordance with section 32 of this act.

24 (14) Any insured aggrieved with respect to any filing may
25 make written application to the director for a hearing on such
26 filing. The hearing application shall specify the grounds to be
27 relied upon by the applicant. If the director finds that the
28 hearing application is made in good faith, that a remedy would be

1 available if the grounds are established, or that such grounds
2 otherwise justify holding a hearing, the director shall hold a
3 hearing in accordance with section 32 of this act.

4 (15) If, after a hearing held pursuant to subsection (13)
5 or (14) of this section, the director finds that a filing does not
6 meet the requirements of subsection (9) of this section, the
7 director shall issue an order stating in what respects such filing
8 fails to meet the requirements and when, within a reasonable period
9 thereafter, such rating system or aspect of a rating system shall
10 no longer be used. Copies of the order shall be sent to the
11 applicant, if applicable, and to every affected insurer and
12 advisory organization. The order shall not affect any contract or
13 policy made or issued prior to the expiration of the period set
14 forth in the order.

15 Sec. 9. (1) For insurance subject to section 8 of this
16 act, insurers may increase or decrease premiums on an individual
17 risk basis up to forty percent based on any factor except:

18 (a) The rate adjustment cannot be based upon the race,
19 creed, national origin, or religion of the insured; and

20 (b) The rate adjustment cannot violate the Unfair
21 Discrimination Against Subjects of Abuse in Insurance Act.

22 (2) If the director finds after a hearing that (a) the
23 utilization of this section by the insurance industry has produced
24 a significant number of rate modifications at the upper limit and
25 at the lower limit of the allowable range of modification and (b)
26 the modifiers at the upper and lower limits of the allowable range
27 of modification appear to be predominantly correlated with
28 individual risk factors that relate to expected losses and

1 expenses, the director may, by rules and regulations, broaden the
2 range of plus or minus forty percent for any line or type of
3 insurance subject to section 8 of this act.

4 (3) If the director finds after a hearing that modifiers
5 at the upper or lower limits of the allowable range of modification
6 are not predominantly correlated with individual risk factors that
7 relate to expected losses and expenses, the director may, by rules
8 and regulations, reduce the range of plus or minus forty percent
9 for any line or type of insurance subject to section 8 of this act,
10 but such reduction shall not be to less than plus or minus
11 twenty-five percent.

12 Sec. 10. (1) Rating systems shall not produce premiums
13 that are excessive. A premium level is excessive if it is likely
14 to produce a profit that is unreasonably high for the insurance
15 provided or if expenses are unreasonably high in relation to
16 services rendered. In the evaluation of a premium level, due
17 consideration shall be given to loss experience within and outside
18 this state; reasonably anticipated trends; investment income;
19 special assessments, conflagration, and catastrophe hazards; a
20 reasonable margin for profit; dividends, savings, or unabsorbed
21 premium deposits allowed or returned by insurers to policyholders,
22 members, or subscribers; expense experience both countrywide and
23 specially applicable to this state; and other relevant factors.

24 (2) Rating systems shall not produce premiums that are
25 inadequate. A premium level is inadequate only if (a) it would
26 endanger the solvency of the insurer or (b) it would not be
27 expected to generate a profit on a direct basis and would be likely
28 to have the effect of diminishing competition.

1 (3)(a) Rating systems shall not produce premiums that are
2 unfairly discriminatory. Premiums are unfairly discriminatory if,
3 after allowing for practical limitations, price differentials fail
4 to equitably reflect differences in expense requirements or
5 expected losses.

6 (b) Risks may be grouped by classification groupings that
7 identify objective risk differences for the establishment of rates
8 and prospective loss costs and for the use of rating systems.

9 (c) Rates and premiums may be modified for individual
10 risks or groups of risks in accordance with objective standards for
11 measuring differences among risks or groups of risks that can be
12 demonstrated to have a probable effect upon losses or expenses.
13 The fact that experience rating plans use loss reserves shall not
14 be interpreted as making experience rating plans subjective.

15 (d) A rate is not unfairly discriminatory if it is
16 averaged broadly among persons insured under a group, franchise, or
17 blanket policy or a mass marketed plan. Mass marketed plan means a
18 method of selling property liability insurance wherein:

19 (i) The insurance is offered to employees of particular
20 employers, members of particular associations or organizations, or
21 stockholders of publicly held corporations or to persons grouped in
22 other ways, except groupings formed principally for the purpose of
23 obtaining such insurance; and

24 (ii) The employer or other organization has agreed to, or
25 otherwise affiliated itself with, the sale of such insurance to its
26 employees or other groupings of persons affiliated with it.

27 (e) An insurer may have different rate levels for
28 otherwise similar insureds based on expense differences between

1 coverage sold:

2 (i) Through direct sales using employees of the insurer;

3 (ii) Through direct sales by the insurer using the
4 Internet; and

5 (iii) Through agents that are not employees of the
6 insurer.

7 (f) In the case of dividend rating plans, differences in
8 past loss and loss adjustment expense experience among risks may
9 also be recognized.

10 (g) No risk classification or grouping may be based upon
11 the race, creed, national origin, or religion of the insured.

12 (h) No rating system may violate the Unfair
13 Discrimination Against Subjects of Abuse in Insurance Act.

14 (4) Prospective loss costs shall be as near as is
15 practical to the expected cost of future losses, including loss
16 adjustment expenses. Anticipated special assessments may be
17 included with prospective loss costs.

18 Sec. 11. (1) Each insurer to which this section applies
19 as provided in section 6 of this act shall file with the director
20 every rating system and every modification of such rating system
21 that it proposes to use. No insurer shall issue a contract or
22 policy except in accordance with the filings that are in effect for
23 such insurer as provided in the Property and Casualty Insurance
24 Rate and Form Act, except:

25 (a) As provided in subsections (6) and (7) of this
26 section;

27 (b) As provided by rules and regulations adopted and
28 promulgated pursuant to section 15 of this act; or

1 (c) For types of inland marine risks that have, by custom
2 of the industry, not been written according to manual rates or
3 rating plans. For types of inland marine risks for which the
4 custom of the industry has not been established, the director shall
5 consider the similarity of the new insurance to existing types of
6 insurance and classes of risk and whether it would be reasonably
7 practical to create and file rating systems prior to use.

8 (2) Every filing shall state its proposed effective date,
9 which shall not be prior to the date that the director receives the
10 filing. Instead of a specific date, a filing may indicate that it
11 will be effective a reasonable specified period of time after
12 approval or that the insurer will notify the director of the
13 effective date within ninety days after approval.

14 (3) Every filing shall provide an objective description
15 of the risks and the coverages to which the rating system will
16 apply. If the insurer has another rating system on file or pending
17 that applies to some or all of these same risks, the filing shall
18 disclose this and shall objectively identify those risks to which
19 each rating system will apply. Filings shall include a list of
20 manual pages and other rating system elements that will be replaced
21 when the approval of a filing will result in the replacement or
22 alteration of previously approved rating systems. In addition,
23 insurers shall maintain listings of manual pages and other rating
24 system elements that have been approved by the director so that
25 such listings can be provided upon request.

26 (4) Each insurer shall file or incorporate by reference
27 to material filed with the director all supporting information
28 relating to a rating system. If a filing is not accompanied by

1 such information or if additional information is required to
2 complete review of the filing, the director may require the filer
3 to furnish the information, and in that event the review period in
4 subsection (10) of this section shall commence on the date such
5 information is received by the director. If a filer fails to
6 furnish the required information within ninety days, the director
7 may, by written notice sent to the insurer, deem the filing as
8 withdrawn and not available for use.

9 (5) An insurer may authorize the director to accept
10 rating system filings and prospective loss cost filings made on its
11 behalf by an advisory organization. The insurer shall file
12 additional information as is necessary to complete its rating
13 systems on file with the director. At the request of the director,
14 an insurer using the services of an advisory organization shall
15 provide information to demonstrate that use of prospective loss
16 costs and anticipated special assessments filed by the advisory
17 organization will not result in premiums that are excessive,
18 inadequate, or unfairly discriminatory or that otherwise violate
19 the approval standards contained in this section.

20 (6)(a) Except as otherwise provided in subdivision (6)(b)
21 of this section for workers' compensation insurance, a rate or
22 premium in excess of that provided by a filing otherwise applicable
23 may be used on any specific risk upon the prior written application
24 of the insured that describes the insured's unusual or
25 extrahazardous exposures that are not otherwise contemplated by the
26 rates on file for that class of risk, filed with and approved by
27 the director.

28 (b) For workers' compensation insurance, a rate or

1 premium in excess of that provided by a filing otherwise applicable
2 may be used for any specific employer upon the prior written
3 consent of the employer that describes its unusual or
4 extrahazardous exposures that are not otherwise contemplated by the
5 rates on file for that employer's rate classification. For
6 employers that are offered coverage at a rate higher than would be
7 available in the assigned risk plan, the consent must include an
8 acknowledgment of the availability of coverage at a lower price
9 from the assigned risk plan. Such signed consent shall be filed
10 with the director no later than thirty days after the effective
11 date of the insurance to which it applies. The director shall
12 monitor such rate applications to assure compliance with this
13 subsection. The director may, after a hearing, require by order
14 that such applications for an insurer that has demonstrated a
15 pattern of using this rating device for employers that do not
16 possess unusual or extrahazardous exposures, or that otherwise
17 fails to comply with this subsection, shall be subject to prior
18 approval pursuant to subdivision (6)(a) of this section. Upon
19 application by an insurer affected by such order, demonstrating
20 that its filings made subsequent to the order have been in
21 compliance with this subdivision, the director shall vacate such
22 order. The director shall consider any such application within
23 thirty days after its receipt for any order that has been in effect
24 for more than nine months since its inception or since it was last
25 reviewed by the director pursuant to an application by the insurer.

26 (7) The director may by rules and regulations or by order
27 suspend or modify the filing requirements of this section as to any
28 type of insurance or class of risk for which rating systems cannot

1 practicably be filed before they are used. In making this finding,
2 the director shall ascertain whether a system of rating
3 classifications and exposure bases that would equitably reflect the
4 differences in expense requirements and expected losses between
5 individual risks has been developed or appears reasonably capable
6 of being developed. The director may examine insurers as is
7 necessary to ascertain whether any rating systems affected by such
8 rules and regulations meet the standards contained in this section.

9 (8) All filings and any supporting information provided
10 pursuant to this section shall be open to public inspection upon
11 their receipt, except that correspondence specifically relating to
12 individual risks shall be confidential and may not be made public
13 by the director except as may be compiled in summaries of such
14 activity.

15 (9) The director shall review filings as soon as
16 reasonably possible after they have been made. The director shall
17 disapprove a filing if:

18 (a) The filing fails to meet the standards contained in
19 section 10 of this act;

20 (b) The insurer has more than one rating system
21 applicable to the line or type of insurance and the insurer fails
22 to specify objective differences between risks to determine the
23 risks and the coverages to which the rating system will apply;

24 (c) The filing proposes to discriminate between risks
25 based on optional commission differences for agents; or

26 (d) The filing discriminates between risks based on
27 subjective factors, except that an experience rating plan may use
28 loss reserves without being considered as subjective.

1 (10) Within thirty days after receipt, the director shall
2 approve a filing that meets the requirements of the act, except
3 that this review period may be extended for an additional period
4 not to exceed thirty days if the director gives written notice
5 within the original review period to the insurer or advisory
6 organization. A filing shall be deemed to meet the requirements of
7 the act unless disapproved by the director within the review period
8 or any extension thereof.

9 (11) If, within the review period provided by subsection
10 (10) of this section or any extension thereof, the director finds
11 that a filing does not meet the requirements of the act, a written
12 disapproval notice shall be sent to the insurer. Such notice shall
13 specify in what respects the filing fails to meet these
14 requirements and state that such filing shall not become effective.

15 (12) Filings shall become effective on their proposed
16 effective date if approved or deemed approved on or before that
17 date. Filings approved or deemed approved after their proposed
18 effective dates shall become effective after notification by the
19 insurer of a revised effective date, which shall not be prior to
20 the date that the insurer mails the notification to the director.
21 If an insurer fails to furnish a revised effective date within a
22 reasonable period of time not less than ninety days, the director
23 may, by written notice sent to the insurer, deem the filing as
24 withdrawn and not available for use.

25 (13) An insurer or advisory organization whose filing is
26 disapproved may, within thirty days after receipt of a disapproval
27 notice, request a hearing in accordance with section 32 of this
28 act.

1 (14) If, at any time after approval, the director finds
2 that a rating system or modification thereof does not meet or no
3 longer meets the requirements of the act, the director shall hold a
4 hearing in accordance with section 32 of this act.

5 (15) Any insured aggrieved with respect to any filing may
6 make written application to the director for a hearing on such
7 filing. The hearing application shall specify the grounds to be
8 relied upon by the applicant. If the director finds that the
9 hearing application is made in good faith, that a remedy would be
10 available if the grounds are established, or that such grounds
11 otherwise justify holding a hearing, the director shall hold a
12 hearing in accordance with section 32 of this act.

13 (16) If, after a hearing initiated pursuant to subsection
14 (14) or (15) of this section, the director finds that a filing does
15 not meet the requirements of the act, the director shall issue an
16 order stating in what respects such filing fails to meet the
17 requirements and when, within a reasonable period thereafter, such
18 rating system or aspect of a rating system shall no longer be used.
19 Copies of the order shall be sent to the applicant, if applicable,
20 and to every affected insurer and advisory organization. The order
21 shall not affect any contract or policy made or issued prior to the
22 expiration of the period set forth in the order.

23 Sec. 12. No later than January 1, 2001, the director
24 shall adopt and promulgate rules and regulations to disapprove
25 subjective rating criteria effective January 1, 2001, in order to
26 bring rating systems in compliance with the Property and Casualty
27 Insurance Rate and Form Act. The rules and regulations shall
28 require the refiling of rating systems for insurers and filings

1 when refiling is unavoidable to meet the requirements of the act,
2 but shall attempt to minimize the number of rating systems that
3 must be refiled. The rules and regulations may allow insurers to
4 indicate in a written statement filed with the director that the
5 insurer will discontinue use of subjective rating criteria
6 effective January 1, 2001.

7 Sec. 13. (1) Each insurer shall file with the director
8 every policy form and related attachment rule and every
9 modification thereof which it proposes to use. No insurer shall
10 issue a contract or policy except in accordance with the filings
11 that are in effect for such insurer as provided in the Property and
12 Casualty Insurance Rate and Form Act except as provided in
13 subsection (6) or (7) of this section or as provided by rules and
14 regulations adopted and promulgated pursuant to section 14 or 15 of
15 this act.

16 (2) Every filing shall state its proposed effective date,
17 which shall not be prior to the date that the director receives the
18 filing. Instead of a specific date, a filing may indicate that it
19 will be effective a reasonable specified period of time after
20 approval or that the insurer will notify the director of the
21 effective date within ninety days after approval.

22 (3) Every policy form filing shall explain the intended
23 use of such policy forms. Filings shall include a list of policy
24 forms that will be replaced when the approval of a filing will
25 result in the replacement of previously approved policy forms. In
26 addition, insurers shall maintain listings of policy forms that
27 have been filed and approved by the director so that such listings
28 can be provided upon request.

1 (4) If additional information is needed to complete
2 review of a policy form filing, the director may require the filer
3 to furnish the information and in that event the review period in
4 subsection (10) of this section shall commence on the date such
5 information is received by the director. If a filer fails to
6 furnish the required information within ninety days, the director
7 may, by written notice sent to the insurer, deem the filing as
8 withdrawn and not available for use.

9 (5) An insurer may authorize the director to accept
10 policy form filings made on its behalf by an advisory organization.

11 (6)(a) Subject to the following requirements, policy
12 forms unique in character and designed for and used with regard to
13 an individual risk under common ownership subject to the rate
14 filing provisions of section 8 of this act shall be exempt from the
15 approval requirements contained in subsection (1) of this section.

16 (b) At the earliest practical opportunity, but no later
17 than the effective date of the policy using unfiled provisions, the
18 insurer shall provide the prospective insured with an itemization
19 of the policy provisions that have not been approved by the
20 director and receive written acknowledgment from prospective
21 insureds for which it ultimately provides coverage. This
22 requirement does not apply to renewals using the same unfiled
23 provisions.

24 (c) A policy form that has been used in this state or
25 elsewhere by the insurer for another risk shall not be subject to
26 the exemption provided by this subsection, except than an insurer
27 may use a policy form previously developed for a single risk for a
28 second risk if the policy form is filed for approval within sixty

1 days after its second usage.

2 (d) The exemption provided by this subsection shall not
3 apply to excess workers' compensation or to policy forms that,
4 prior to their use by the insurer, had been filed by an advisory
5 organization in this state or had been filed by the insurer in any
6 jurisdiction, regardless of whether approval was received.

7 (e) The director may by rules and regulations or by order
8 make specific restrictions relating to the exemption provided by
9 this subsection and may require the informational filing of policy
10 forms subject to such exemption within a reasonable time after
11 their use.

12 (7) The director may by rules and regulations suspend or
13 modify the filing requirements of this section as to any type of
14 insurance or class of risk for which policy forms cannot
15 practicably be filed before they are used. The director may
16 examine insurers as is necessary to ascertain whether any policy
17 forms affected by such rules and regulations meet the standards
18 contained in the act.

19 (8) All filings and any supporting information provided
20 pursuant to this section shall be open to public inspection upon
21 their receipt, except that correspondence specifically relating to
22 individual risks shall be confidential and may not be made public
23 by the director except as may be compiled in summaries of such
24 activity.

25 (9) The director shall review filings as soon as
26 reasonably possible after they have been made. The director shall
27 disapprove a filing that contains provisions, exceptions, or
28 conditions that: (a) Are unjust, unfair, ambiguous, inconsistent,

1 inequitable, misleading, deceptive, or contrary to public policy;
2 (b) are written so as to encourage the misrepresentation of
3 coverage; (c) fail to reasonably provide the general coverage for
4 policies of that type; (d) fail to comply with the provisions or
5 the intent of the laws of this state; or (e) would provide coverage
6 contrary to the public interest.

7 (10) Within thirty days after receipt, the director shall
8 approve filings that meet the requirements of the act, except that
9 this review period may be extended for an additional period not to
10 exceed thirty days if the director gives written notice within the
11 original review period to the insurer or advisory organization. A
12 filing shall be deemed to meet the requirements of the act unless
13 disapproved by the director within the review period or any
14 extension thereof.

15 (11) If, within the review period provided by subsection
16 (10) of this section or any extension thereof, the director finds
17 that a filing does not meet the requirements of the act, a written
18 disapproval notice shall be sent to the insurer. Such notice shall
19 specify in what respects the filing fails to meet these
20 requirements and state that such filing shall not become effective.

21 (12) Filings shall become effective on their proposed
22 effective date if approved or deemed approved on or before that
23 date. Filings approved or deemed approved after their proposed
24 effective dates shall become effective after notification by the
25 insurer of a revised effective date, which shall not be prior to
26 the date that the insurer mails the notification to the director.
27 If an insurer fails to furnish a revised effective date within a
28 reasonable period of time not less than ninety days, the director

1 may, by written notice sent to the insurer, deem the filing as
2 withdrawn and not available for use.

3 (13) An insurer or advisory organization whose filing is
4 disapproved may, within thirty days after receipt of a disapproval
5 notice, request a hearing in accordance with section 32 of this
6 act.

7 (14) If, at any time after approval, the director finds
8 that a policy form, attachment rule, or modification thereof does
9 not meet or no longer meets the requirements of the act, the
10 director shall hold a hearing in accordance with section 32 of this
11 act.

12 (15) Any insured aggrieved with respect to any filing may
13 make written application to the director for a hearing on such
14 filing. The hearing application shall specify the grounds to be
15 relied upon by the applicant. If the director finds that the
16 hearing application is made in good faith, that a remedy would be
17 available if the grounds are established, or that such grounds
18 otherwise justify holding a hearing, the director shall hold a
19 hearing in accordance with section 32 of this act.

20 (16) If, after a hearing initiated pursuant to subsection
21 (14) or (15) of this section, the director finds that a filing does
22 not meet the requirements of the act, the director shall issue an
23 order stating in what respects such filing fails to meet the
24 requirements and when, within a reasonable period thereafter, such
25 policy form or attachment rule shall no longer be used. Copies of
26 the order shall be sent to the applicant, if applicable, and to
27 every affected insurer and advisory organization. The order shall
28 not affect any contract or policy made or issued prior to the

1 expiration of the period set forth in the order.

2 Sec. 14. (1) The director shall adopt and promulgate
3 rules and regulations to provide that the policy form approval
4 requirements set forth in section 13 of this act shall not apply to
5 policies written for individual commercial risks that are primarily
6 located in another state or jurisdiction. To determine whether a
7 commercial risk is primarily located in this state, such rules and
8 regulations shall primarily consider whether the operations of the
9 risk located in this state generate larger premiums at policy
10 inception than the operations of the commercial risk located in any
11 other single state or jurisdiction.

12 (2) Policy forms for commercial risks exempted by the
13 rules and regulations adopted and promulgated pursuant to
14 subsection (1) of this section may include language that conflicts
15 with sections 44-357, 44-358, and 44-501.02. If a conflict then
16 results between a policy form and the requirements of such
17 sections, such sections shall apply.

18 (3) Policy forms for commercial risks exempted by the
19 rules and regulations adopted and promulgated pursuant to
20 subsection (1) of this section may include language that conflicts
21 with sections 44-349, 44-350, 44-501, 44-514 to 44-518, 44-520 to
22 44-523, and 44-6408 and the provision of section 44-601 that
23 prohibits policies with a term longer than five years. If a
24 conflict results between a policy form and the requirements of any
25 of these sections, the language in the policy form shall apply to
26 the extent that it is inconsistent with such sections.

27 (4) Except as set forth in subsections (2) and (3) of
28 this section, the rules and regulations adopted and promulgated

1 pursuant to this section shall require that policy forms exempted
2 from policy form approval requirements do not violate any law of
3 this state.

4 Sec. 15. (1) The director shall adopt and promulgate
5 rules and regulations to modify or eliminate requirements for
6 insurers to use filed rates and policy forms for commercial
7 policyholders under common ownership identified through the
8 application of subsection (4) of this section.

9 (2) The rules and regulations adopted and promulgated
10 pursuant to this section may establish requirements and thresholds
11 that differ by line or type of insurance or that differ for rates
12 and policy forms.

13 (3) The rules and regulations adopted and promulgated
14 pursuant to this section shall require insurers to inform exempt
15 commercial policyholders prior to the inception of coverage of
16 those policy forms applying to them that have not been approved by
17 the director.

18 (4) The director shall consider the following factors in
19 determining those commercial policyholders to which the rules and
20 regulations adopted and promulgated pursuant to this section shall
21 apply:

22 (a) For modification or elimination of the applicability
23 of filed rates, characteristics of insureds that are likely to
24 avail themselves of regular price comparisons between competing
25 insurers and are likely to study and understand the differences and
26 details of pricing proposals that they receive;

27 (b) For modification or elimination of the applicability
28 of filed rates, characteristics of insureds for which filed rates

1 and rating plans are less likely to provide the lowest premiums
2 otherwise consistent with the provisions of the Property and
3 Casualty Insurance Rate and Form Act;

4 (c) Modification or elimination of the applicability of
5 filed rates for commercial insureds that are primarily located in
6 another jurisdiction where they are subject to similar exemptions
7 or waivers in that jurisdiction;

8 (d) For modification or elimination of the applicability
9 of filed policy forms, characteristics of insureds that are likely
10 to study and understand the details of their business risks and
11 insurance coverages and exclusions;

12 (e) For modification or elimination of the applicability
13 of filed policy forms, characteristics of insureds that are likely
14 to require individually written policies, as contrasted to insureds
15 that can customarily have their coverage needs met using policy
16 forms that could also be used for other insureds;

17 (f) For both rates and policy forms, favorable or adverse
18 experiences with the modification or elimination of regulatory
19 requirements, especially the experience in this state; and

20 (g) Any other relevant factor.

21 (5) For exempt commercial policyholders to which rating
22 system regulation is made otherwise inapplicable, insurers shall
23 allocate premiums between policies, exposures, and states in
24 proportion to the expected losses and expenses for those policies,
25 exposures, and states.

26 (6) The following restrictions apply to rules and
27 regulations adopted and promulgated pursuant to this section:

28 (a) The rules and regulations may not allow any reduction

1 of the benefits payable under workers' compensation or excess
2 workers' compensation policies or any alteration of provisions for
3 the handling and settlement of claims under such policies, but the
4 rules and regulations may allow exempt commercial policyholders to
5 negotiate workers' compensation or excess workers' compensation
6 premiums and premium payment provisions;

7 (b) The rules and regulations may not allow any reduction
8 of automobile insurance coverage limits to less than those required
9 by Nebraska law, but the rules and regulations may allow exempt
10 commercial policyholders to negotiate automobile insurance premiums
11 and premium payment provisions;

12 (c) The rules and regulations may not allow any
13 limitation of the coverage provisions necessary for health care
14 providers to qualify under the Nebraska Hospital-Medical Liability
15 Act, but the rules and regulations may allow exempt commercial
16 policyholders to negotiate medical professional liability insurance
17 premiums and premium payment provisions;

18 (d) The rules and regulations may not reduce the rate
19 regulatory requirements applying to any policyholder with total
20 premiums of less than twenty-five thousand dollars for lines of
21 insurance subject to the Property and Casualty Insurance Rate and
22 Form Act; and

23 (e) The rules and regulations may not reduce the form
24 regulatory requirements applying to any policyholder with total
25 premiums of less than fifty thousand dollars for lines of insurance
26 subject to the Property and Casualty Insurance Rate and Form Act.

27 Sec. 16. (1) The director shall adopt and promulgate
28 rules and regulations to allow exempt commercial policyholders to

1 be exempt from those provisions of sections 44-5510 and 44-5511
2 that require, as a condition for the purchase of insurance from a
3 nonadmitted insurer, that applicants demonstrate an inability to
4 obtain insurance from a licensed insurer. Such exemption shall not
5 apply to workers' compensation insurance, excess workers'
6 compensation insurance, or automobile liability insurance, except
7 that such exemption may apply to automobile liability insurance
8 purchased as excess insurance over a policy that provides limits
9 that are at least equal to the minimum limits of liability required
10 by section 60-534.

11 (2) The rules and regulations adopted and promulgated
12 pursuant to this section may establish requirements and thresholds
13 that differ by line or type of insurance or that differ from the
14 requirements and thresholds for exemption from rate and policy form
15 requirements adopted and promulgated pursuant to section 15 of this
16 act.

17 (3) In addition to the factors specified in section 15 of
18 this act, the director shall consider the following in making a
19 determination of the requirements and thresholds that will apply:

20 (a) The relationship of deductibles, self-insured
21 retentions, and limits of liability purchased by insureds versus
22 the protection provided by the Nebraska Property and Liability
23 Insurance Guaranty Association;

24 (b) The characteristics of insureds likely to be able to
25 evaluate the ability of a nonadmitted insurer to meet its policy
26 obligations; and

27 (c) The characteristics of insureds likely to be able to
28 resolve policy and claims disputes that they may have with a

1 nonadmitted insurer.

2 (4) The rules and regulations may not exempt any
3 policyholder with total premiums of less than one hundred thousand
4 dollars for lines of insurance subject to the Property and Casualty
5 Insurance Rate and Form Act.

6 Sec. 17. Within a reasonable time after receiving a
7 written request and after receiving payment of such reasonable
8 charge as it may require, every insurer and advisory organization
9 shall furnish all pertinent information to any insured affected by
10 a rate, premium, or prospective loss cost made by the insurer or
11 advisory organization. Upon written request, every insurer and
12 advisory organization shall provide within this state reasonable
13 means by which the insured aggrieved by the application of the
14 advisory organization's or insurer's rating system may be heard, in
15 person or by an authorized representative, to review the manner in
16 which such rating system has been applied in connection with the
17 insurance afforded the insured. If the insurer or advisory
18 organization fails to act upon such request within thirty days
19 after it is made, the applicant may proceed in the same manner as
20 if the application had been rejected. An insured affected by the
21 action of the insurer or advisory organization on such request may
22 appeal to the director within thirty days after written notice of
23 such action. The director, after a hearing held in accordance with
24 section 32 of this act, may affirm the action of the insurer or
25 advisory organization or order remedial action to be undertaken by
26 the insurer or advisory organization.

27 Sec. 18. (1) No advisory organization or statistical
28 agent shall provide any service relating to insurance subject to

1 the Property and Casualty Insurance Rate and Form Act, and no
2 insurer shall use the services of such advisory organization or
3 statistical agent for such purposes, unless the advisory
4 organization or statistical agent has been issued a certificate of
5 authority by the director. Such certificate of authority shall
6 expire on April 30 each year and shall be renewed annually if the
7 advisory organization or statistical agent has continued to comply
8 with the laws of this state and the rules and regulations of the
9 director.

10 (2) No advisory organization or statistical agent shall
11 refuse to supply any services for which it is licensed in this
12 state to any insurer authorized to do business in this state and
13 offering to pay the fair and usual compensation for the services.

14 (3) An advisory organization or statistical agent
15 applying to the director for a certificate of authority shall
16 include with its application:

17 (a) A copy of its constitution, charter, articles of
18 incorporation, organization, agreement, or association, bylaws,
19 plan of operation, and other rules or regulations governing the
20 conduct of its business;

21 (b) The names of insurers that own or have control over
22 the applicant, and a description of their ownership or control;

23 (c) The name and address of a resident of this state upon
24 whom notices, process, or orders of the director may be served;

25 (d) Information showing its qualifications for acting in
26 the capacity for which it seeks a certificate of authority;

27 (e) Biographical information on its officers; and

28 (f) Any other relevant information and documents that the

1 director may require.

2 (4) Every applicant for a certificate of authority shall
3 notify the director of all material changes in the information or
4 documents on which its application was based. Any amendment to a
5 document filed under this section shall be filed at least thirty
6 days before it becomes effective.

7 (5) The director shall issue a certificate of authority
8 stating the authorized activity of the applicant for those
9 applicants that meet all requirements of the law and are competent,
10 trustworthy, and qualified to provide the services proposed. The
11 authorized activity of an advisory organization or statistical
12 agent may be limited to specified lines or types of insurance.

13 (6) The director may at any time, after a hearing in
14 accordance with section 32 of this act, suspend or revoke the
15 certificate of authority of an advisory organization or statistical
16 agent that does not comply with the requirements of the act.

17 (7) An applicant requesting a certificate of authority to
18 operate both as an advisory organization and as a statistical agent
19 may be so authorized under a single certificate.

20 Sec. 19. (1) For purposes of this section, insurer has
21 the same meaning as in section 44-103, rather than as in section 4
22 of this act.

23 (2) No insurer, advisory organization, or statistical
24 agent shall attempt to monopolize or combine or conspire with any
25 other person to monopolize an insurance market or to engage in a
26 boycott, on a concerted basis, of an insurance market.

27 (3) No insurer shall agree with any other insurer or with
28 any advisory organization or statistical agent to require adherence

1 to or to require use of any aspect of any rating system, form,
2 prospective loss cost, dividend payment practice, underwriting rule
3 or practice, survey, inspection, or similar material except as
4 required by section 24 of this act or as is necessary to develop
5 statistical plans. This subsection shall not apply to agreements
6 between insurers under the same ownership.

7 (4) No advisory organization or statistical agent shall
8 agree with any insurer or with another advisory organization or
9 statistical agent to require adherence to or to require use of any
10 aspect of any rating system, form, prospective loss cost, dividend
11 payment practice, underwriting rule or practice, survey,
12 inspection, or similar material except as required by section 24 of
13 this act or as is necessary to develop statistical plans.

14 (5) The fact that two or more insurers, whether or not
15 members or subscribers of an advisory organization, consistently or
16 intermittently use the same rates, rating systems, forms,
17 prospective loss costs, underwriting rules or practices, surveys,
18 inspections, or similar materials shall not be sufficient basis to
19 establish a violation of this section.

20 (6) No insurer, advisory organization, or statistical
21 agent shall make any arrangement with any other insurer, advisory
22 organization, statistical agent, or other person which has the
23 purpose or effect of unreasonably restraining trade or of
24 substantially lessening competition in the business of insurance.

25 Sec. 20. Except as permitted in sections 21 and 22 of
26 this act, no advisory organization or statistical agent shall
27 compile, file, or distribute recommendations relating to rating
28 systems that include profits, dividends, or expenses other than

1 loss adjustment expenses.

2 Sec. 21. A statistical agent may, for the lines of
3 insurance for which it has been licensed:

4 (1) Develop statistical plans including territorial and
5 class definitions;

6 (2) Collect and distribute statistical data from insurers
7 or any other source;

8 (3) Collect, compile, and publish past and current rates
9 charged by individual insurers if such information is also made
10 available to the general public at no more than a reasonable cost;

11 (4) Collect and compile exposure and loss experience for
12 the purpose of individual risk experience ratings;

13 (5) Undertake educational activities relating to the
14 collection, compilation, or interpretation of insurance-related
15 data;

16 (6) Distribute any other information that is filed with
17 the director; and

18 (7) Furnish any other services, as approved or directed
19 by the director, related to those enumerated in this section.

20 Sec. 22. An advisory organization may, for the lines of
21 insurance for which it has been licensed:

22 (1) Engage in those activities enumerated in section 21
23 of this act;

24 (2) Prepare, file, and distribute prospective loss costs;

25 (3) Prepare, file, and distribute manuals of rating
26 rules, rating schedules, experience rating plans and other
27 supplementary rating information that do not include final rates,
28 expense provisions, profit provisions, or minimum premiums;

1 (4) Prepare and distribute experience rating plan
2 modifiers for individual policyholders;

3 (5) Prepare, file, and distribute factors, calculations,
4 or formulas pertaining to classification, territory, and other
5 variables;

6 (6) Prepare, file, and distribute increased limits
7 factors, which may include an incremental profit load, also called
8 a risk load;

9 (7) Conduct research and inspections in order to prepare
10 classifications of public fire defenses or to evaluate the
11 effectiveness of building codes and their enforcement;

12 (8) Conduct inspections to determine rating
13 classifications for individual insureds;

14 (9) Consult with public officials regarding public fire
15 protection as it would affect members, subscribers, and others;

16 (10) Conduct research in order to discover, identify, and
17 classify information relating to causes or prevention of losses;

18 (11) Prepare, file, and distribute policy forms and
19 gather information from members, subscribers, and others relative
20 to the application and interpretation of the policy forms;

21 (12) Conduct research and inspections for the purpose of
22 providing risk information relating to individual structures;

23 (13) If instructed by the director, file rates instead of
24 prospective loss costs for assigned risk or other residual market
25 mechanisms;

26 (14) Conduct research to determine the impact of
27 statutory changes upon prospective loss costs;

28 (15) Undertake educational activities on the use of

1 policy forms, analysis of losses, loss trends, loss reserves,
2 expenses, and other policy form and ratemaking topics;

3 (16) For workers' compensation insurance, establish a
4 committee that may include insurance company representatives to
5 review the application of the classification system for individual
6 insureds and to suggest modifications to the classification system;

7 (17) Distribute any other information that is filed with
8 the director; and

9 (18) Furnish any other services approved or directed by
10 the director related to the services enumerated in this section.

11 Sec. 23. Filings by an advisory organization of
12 prospective loss costs, rating systems or policy forms and related
13 attachment rules shall be subject to the provisions of the Property
14 and Casualty Insurance Rate and Form Act applicable to filings
15 generally. Rating system filings by an advisory organization shall
16 be subject to the provisions of sections 10 and 11 of this act.

17 Sec. 24. (1) Every workers' compensation insurer shall
18 adhere to a uniform classification system and shall report its
19 experience in accordance with statistical plans and other reporting
20 requirements to ensure that data is combined for all insurers for
21 the development of prospective loss costs and the application of
22 experience rating.

23 (2) Every insurer shall utilize experience rating plan
24 modifiers developed by an advisory organization pursuant to an
25 experience rating plan approved by the director.

26 (3) A workers' compensation insurer may develop
27 subclassifications of the uniform classification system upon which
28 a rate may be made. Such subclassifications and the filing shall

1 be subject to the provisions of the Property and Casualty Insurance
2 Rate and Form Act applicable to rating system filings generally.

3 (4) The director shall disapprove subclassifications,
4 rating plans, or other variations from manual rules filed by a
5 workers' compensation insurer or advisory organization if the
6 insurer or advisory organization fails to demonstrate that the data
7 produced can be reported consistently with the uniform
8 classification system and experience rating system and will allow
9 for the application of experience rating.

10 (5) Workers' compensation premiums shall be calculated on
11 a basis that, as nearly as is practicable, after the effects of
12 experience rating and other applicable rating plans have been
13 considered, the sum of expected losses and expected expenses as a
14 percentage of premium shall be the same for high-wage-paying and
15 low-wage-paying employers in the same job classification.

16 Sec. 25. (1) Every joint underwriting pool or joint
17 reinsurance pool shall file with the director a copy of its
18 constitution, articles of incorporation, organization, agreement,
19 or association, bylaws, and other rules and regulations governing
20 its activities, a listing of its members, the name and address of a
21 resident of this state upon whom notices, process, or orders of the
22 director may be served, and any amendments or changes thereto.

23 (2) Notwithstanding section 19 of this act, insurers
24 participating in joint underwriting or in joint underwriting pools
25 or joint reinsurance pools may, in connection with such activity,
26 act in cooperation with each other in the development of rates,
27 rating systems, policy forms, underwriting rules, surveys,
28 inspections, and investigations, the furnishing of loss and expense

1 statistics or other information, or the conducting of research.

2 (3) Except as provided in this section, joint
3 underwriting, joint underwriting pool, and joint reinsurance pool
4 activities shall be subject to the Property and Casualty Insurance
5 Rate and Form Act.

6 (4) If, after a hearing in accordance with section 32 of
7 this act, the director finds that any activity or practice of an
8 insurer participating in joint underwriting, a joint underwriting
9 pool, or a joint reinsurance pool will tend to lessen competition
10 in any market or is otherwise inconsistent with the provisions or
11 purposes of the act, the director may issue an order requiring the
12 discontinuance of such activity or practice.

13 Sec. 26. (1) To ascertain compliance with the Property
14 and Casualty Insurance Rate and Form Act, the director may, as
15 often as is deemed to be expedient, make or cause to be made an
16 examination of each advisory organization, statistical agent, joint
17 underwriting pool, or joint reinsurance pool doing business in this
18 state. The advisory organization, statistical agent, or pool
19 examined shall pay the reasonable costs of any such examination.
20 The officers, manager, agents, and employees of such advisory
21 organization, statistical agent, or pool may be examined at any
22 time under oath and shall exhibit all books, records, accounts,
23 documents, or agreements governing its method of operation.

24 (2) In lieu of any such examination, the director may
25 accept (a) the report of an examination made by the insurance
26 supervisory official of another state or (b) the report of an
27 independent certified public accountant in good standing with the
28 American Institute of Certified Public Accountants. Every such

1 advisory organization, statistical agent, joint underwriting pool,
2 or joint reinsurance pool shall, within thirty days after the
3 receipt of a final examination report of any other state, provide a
4 copy of the report to the director. Every such advisory
5 organization, statistical agent, joint underwriting pool, or joint
6 reinsurance pool shall, within thirty days after the publication or
7 public filing of a report made by an independent certified public
8 accountant, provide a copy of the report to the director.

9 Sec. 27. (1) The director shall adopt and promulgate
10 rules and regulations to assure that the experience of all insurers
11 is provided to the director at least annually in such form and
12 detail as is necessary to aid in effecting the purposes of the
13 Property and Casualty Insurance Rate and Form Act. The director
14 may designate one or more statistical agents to assist in gathering
15 such experience and making compilations thereof. The scope of such
16 rules and regulations may include the data which must be reported
17 by insurers, definitions of data elements, the timing and frequency
18 of statistical reporting by insurers, data quality standards, data
19 edit and audit requirements, data retention requirements, reports
20 to be generated by statistical agents to fulfill the requirements
21 of this section, and the timing of such reports.

22 (2) Should the director choose to designate more than one
23 statistical agent to assist for a line or type of insurance, the
24 director may adopt and promulgate rules and regulations necessary
25 to ensure that statistical data that the director has required is
26 combined for reports to the director.

27 (3) The following provisions apply only to the disclosure
28 of data and reports provided to the director pursuant to this

1 section and to the disclosure of reports produced by the director
2 from data and reports provided pursuant to this section:

3 (a) The director shall not disclose data that identifies
4 individual insurers;

5 (b) The director shall not disclose data that is likely
6 to identify individual policyholders or claimants or when there is
7 reason to suspect that individual open claim reserves may be
8 identified with individual policyholders or claimants;

9 (c) The director may agree in advance to withhold data
10 from public disclosure when confidentiality is requested by the
11 statistical agent providing the data to the director, but only if
12 the data include data elements that the director had not required,
13 prior to their writing or occurrence, to be recorded by insurers;
14 and

15 (d) All other data contained in reports made pursuant to
16 this section shall be subject to public disclosure.

17 (4) The director may adopt and promulgate rules and
18 regulations for the interchange of data necessary for the
19 application of rating plans.

20 (5) In order to further uniform administration of rate
21 regulatory laws, the director and every insurer and advisory
22 organization may exchange information and experience data with
23 insurance supervisory officials, insurers, and advisory
24 organizations in other states and may consult with them with
25 respect to the application of rating systems.

26 Sec. 28. Insurers may agree to the equitable
27 apportionment among them of insurance to be afforded applicants who
28 are in good faith entitled to but who are unable to procure such

1 insurance through ordinary methods. Such insurers may agree on the
2 use of policy forms, rating systems, and reasonable modifications
3 thereof for such insurance. Such agreements may include pooling
4 arrangements or reinsurance. Such agreements, policy forms, rating
5 systems, and modifications thereof shall be subject to the approval
6 of the director.

7 Sec. 29. No person shall willfully withhold information
8 that will affect the forms applicable, dividends payable, or rates
9 or premiums chargeable from the director or any statistical agent,
10 advisory organization, or insurer. No person shall knowingly give
11 false or misleading information that will affect the policy forms
12 applicable, dividends payable, or rates or premiums chargeable to
13 the director or any statistical agent, advisory organization, or
14 insurer. A person who violates this section shall be subject to
15 provisions of section 30 of this act.

16 Sec. 30. (1) Whenever the director has reason to believe
17 that any person has violated any provision of the Property and
18 Casualty Insurance Rate and Form Act, the director shall hold a
19 hearing in accordance with section 32 of this act. If, after such
20 hearing, the director determines that the person has violated any
21 provision of the act, the director may order any one or more of the
22 following:

23 (a) Payment of an administrative penalty of not more than
24 one thousand dollars for every act or violation but not to exceed
25 an aggregate penalty of ten thousand dollars in any six-month
26 period unless the person knew or reasonably should have known of
27 the violation of the act, in which case the penalty shall be not
28 more than five thousand dollars for every act or violation not to

1 exceed an aggregate penalty of fifty thousand dollars in any
2 six-month period; and

3 (b) Suspension or revocation of the person's license or
4 certificate of authority if such person knew or reasonably should
5 have known of the violation.

6 (2) The powers, remedies, procedures, and penalties
7 provided in the act shall be in addition to any other penalty,
8 remedies, procedures, and penalties provided by law.

9 Sec. 31. Any insurer, joint underwriting pool, joint
10 reinsurance pool, statistical agent, or advisory organization
11 aggrieved by any order or decision of the director made without a
12 hearing may, within thirty days after notice of the order, make
13 written request to the director for a hearing thereon in accordance
14 with section 32 of this act. Pending such hearing and decision,
15 the director may suspend the effective date of his or her action.

16 Sec. 32. If a hearing is held at the request of a party
17 other than the director, unless mutually agreed upon by the
18 director and all interested parties, notice of hearing shall be
19 provided within thirty days after the director's receipt of a
20 written request for a hearing. Notice of hearing shall be given to
21 all interested parties and shall state the time, place, and purpose
22 of the hearing. Unless mutually agreed upon by the director and
23 all interested parties, the hearing shall be held not less than ten
24 days after notice is served. Unless mutually agreed upon by the
25 director and all interested parties or unless the hearing is being
26 held at the request of the director, the hearing shall be held not
27 more than thirty days after notice is served.

28 Sec. 33. Any order or decision of the director made

1 pursuant to the Property and Casualty Insurance Rate and Form Act
2 may be appealed by any party in interest. The appeal shall be in
3 accordance with the Administrative Procedure Act.

4 Sec. 34. The director may make reasonable arrangements
5 and adopt and promulgate rules and regulations to allow or to
6 facilitate the use of electronic media to make filings or to engage
7 in correspondence required by the Property and Casualty Insurance
8 Rate and Form Act.

9 Sec. 35. The director may adopt and promulgate rules and
10 regulations to carry out the Property and Casualty Insurance Rate
11 and Form Act. The rules and regulations shall not be effective
12 prior to January 1, 2001.

13 Sec. 36. Section 44-3,153, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 44-3,153. Under insurance policies obtained pursuant to
16 section 44-3,151, an association is entitled to negotiate with the
17 insurer regarding policy terms, including premiums, discounts,
18 dividends, commissions, fees, and costs. If any policy provides
19 for any deductible for any benefits payable under the Nebraska
20 Workers' Compensation Act, it shall be in conformance with section
21 48-146.03. The insurer shall only enter into arrangements which
22 allow it to report data compatible with the uniform classification
23 system and ~~uniform with~~ experience rating ~~system required by~~
24 ~~subsection (1) of section 44-5028 and which allow for the~~
25 ~~application of experience rating by an advisory organization~~
26 ~~designated by the Director of Insurance pursuant to subsection (1)~~
27 ~~of section 44-5028 as required by subsections (1) and (2) of~~
28 section 24 of this act.

1 Sec. 37. Section 44-522, Revised Statutes Supplement,
2 1999, is amended to read:

3 44-522. (1) The Department of Insurance shall not
4 approve any insurance policy filed for approval with the
5 department, as required by the ~~Property and Casualty Insurance Rate~~
6 ~~and Form Act~~ Property and Casualty Insurance Rate and Form Act,
7 which insures against loss or damage to property or against legal
8 liability from any cause unless such policy contains appropriate
9 provisions for cancellation thereof by either the insurer or the
10 insured and for nonrenewal thereof by the insurer.

11 (2) On any policy or binder of property, marine, or
12 liability insurance, as specified in section 44-201, the insurer
13 shall give the insured sixty days' written notice prior to
14 cancellation or nonrenewal of such policy or binder, except that
15 the insurer may cancel upon ten days' written notice to the insured
16 in the event of nonpayment of premium or if such policy or binder
17 has a specified term of sixty days or less unless the policy or
18 binder has previously been renewed. The requirements of this
19 subsection shall apply to a cancellation initiated by a premium
20 finance company for nonpayment of premium. The provisions of this
21 subsection and subsection (4) of this section shall not apply to
22 nonrenewal of a policy or binder which has a specified term of
23 sixty days or less unless the policy or binder has previously been
24 renewed. Such notice shall state the reason for cancellation or
25 nonrenewal.

26 (3) Notwithstanding subsection (2) of this section, no
27 policy of property, marine, or liability insurance, as specified in
28 section 44-201, which has been in effect for more than sixty days

1 shall be canceled by the insurer except for one of the following
2 reasons:

3 (a) Nonpayment of premium;

4 (b) The policy was obtained through a material
5 misrepresentation;

6 (c) Any insured has submitted a fraudulent claim;

7 (d) Any insured has violated any of the terms and
8 conditions of the policy;

9 (e) The risk originally accepted has substantially
10 increased;

11 (f) Certification to the Director of Insurance of loss of
12 reinsurance by the insurer which provided coverage to the insurer
13 for all or a substantial part of the underlying risk insured; or

14 (g) The determination by the director that the
15 continuation of the policy could place the insurer in violation of
16 the insurance laws of this state.

17 (4) Notice of cancellation or nonrenewal shall be sent by
18 registered, certified, or first-class mail to the insured's last
19 mailing address known to the insurer. If sent by first-class mail,
20 a United States Postal Service certificate of mailing shall be
21 sufficient proof of receipt of notice on the third calendar day
22 after the date of the certificate.

23 (5) The requirements of subsections (2), (3), and (4) of
24 this section shall not apply to automobile insurance coverage,
25 insurance coverage issued under the Nebraska Workers' Compensation
26 Act, insurance coverage on growing crops, or insurance coverage
27 which is for a specified season or event and which is not subject
28 to renewal or replacement.

1 (6) All policy forms issued for delivery in Nebraska
2 shall conform to this section.

3 Sec. 38. Section 44-2909, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 44-2909. No association organized under the Nebraska
6 Hospital and Physicians Mutual Insurance Association Act shall
7 transact the business of insurance until:

8 (1) Its articles and bylaws have been approved by the
9 Director of Insurance and the articles filed as required by section
10 44-2906;

11 (2) It has filed with the director acceptable evidence
12 that it has and will maintain a minimum surplus aggregating at
13 least five hundred thousand dollars in cash in the investments
14 authorized under the Insurers Investment Act or a letter of credit
15 issued by a Nebraska banking institution in accordance with loan
16 restrictions prescribed by the laws of this state;

17 (3) All policies, applications, and other forms together
18 with all manuals and rates to be used have been filed and approved
19 as provided in the ~~Property and Casualty Insurance Rate and Form~~
20 ~~Act~~ Property and Casualty Insurance Rate and Form Act;

21 (4) A certificate of authority has been issued to the
22 association as provided in section 44-303; and

23 (5) It has received at least five applications for
24 policies in a hospital association or at least two hundred
25 applications for policies in a physicians association.

26 Sec. 39. Section 48-151, Revised Statutes Supplement,
27 1999, is amended to read:

28 48-151. Throughout the Nebraska Workers' Compensation

1 Act, the following words and phrases shall be considered to have
2 the following meaning, respectively, unless the context clearly
3 indicates a different meaning in the construction used:

4 (1) Physician means any person licensed to practice
5 medicine and surgery, osteopathic medicine, chiropractic, podiatry,
6 or dentistry in the State of Nebraska or in the state in which the
7 physician is practicing;

8 (2) Accident means an unexpected or unforeseen injury
9 happening suddenly and violently, with or without human fault, and
10 producing at the time objective symptoms of an injury. The
11 claimant has the burden of proof to establish by a preponderance of
12 the evidence that such unexpected or unforeseen injury was in fact
13 caused by the employment. There is no presumption from the mere
14 occurrence of such unexpected or unforeseen injury that the injury
15 was in fact caused by the employment;

16 (3) Occupational disease means only a disease which is
17 due to causes and conditions which are characteristic of and
18 peculiar to a particular trade, occupation, process, or employment
19 and excludes all ordinary diseases of life to which the general
20 public is exposed;

21 (4) Injury and personal injuries mean only violence to
22 the physical structure of the body and such disease or infection as
23 naturally results therefrom. The terms include disablement
24 resulting from occupational disease arising out of and in the
25 course of the employment in which the employee was engaged and
26 which was contracted in such employment. The terms include an
27 aggravation of a preexisting occupational disease, the employer
28 being liable only for the degree of aggravation of the preexisting

1 occupational disease. The terms do not include disability or death
2 due to natural causes but occurring while the employee is at work
3 and do not include an injury, disability, or death that is the
4 result of a natural progression of any preexisting condition;

5 (5) Death, when mentioned as a basis for the right to
6 compensation, means only death resulting from such violence and its
7 resultant effects or from occupational disease;

8 (6) Without otherwise affecting either the meaning or the
9 interpretation of the abridged clause, personal injuries arising
10 out of and in the course of employment, it is hereby declared not
11 to cover workers except while engaged in, on, or about the premises
12 where their duties are being performed or where their service
13 requires their presence as a part of such service at the time of
14 the injury and during the hours of service as such workers, and not
15 to cover workers who on their own initiative leave their line of
16 duty or hours of employment for purposes of their own. Property
17 maintained by an employer is considered the premises of such
18 employer for purposes of determining whether the injury arose out
19 of employment;

20 (7) Willful negligence consists of (a) a deliberate act,
21 (b) such conduct as evidences reckless indifference to safety, or
22 (c) intoxication at the time of the injury, such intoxication being
23 without the consent, knowledge, or acquiescence of the employer or
24 the employer's agent;

25 (8) Intoxication includes, but is not limited to, being
26 under the influence of a controlled substance not prescribed by a
27 physician;

28 (9) ~~Prospective loss~~ Prospective loss costs means

1 ~~prospective-loss~~ prospective loss costs as defined in section
2 ~~44-5014~~ 4 of this act and prepared, filed, or distributed by an
3 advisory organization which has been issued a certificate of
4 authority pursuant to section ~~44-5023~~ 18 of this act; and

5 (10) Whenever in the Nebraska Workers' Compensation Act
6 the singular is used, the plural is considered included; when the
7 masculine gender is used, the feminine is considered included.

8 Sec. 40. Section 48-446, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 48-446. (1) There is hereby created the Workplace Safety
11 Consultation Program. It is the intent of the Legislature that
12 such program help provide employees in Nebraska with safe and
13 healthful workplaces.

14 (2) Under the Workplace Safety Consultation Program, the
15 Department of Labor may conduct workplace inspections and
16 consultations to determine whether employers are complying with
17 standards issued by the federal Occupational Safety and Health
18 Administration for safe and healthful workplaces. Workplace
19 inspections and safety consultations shall be performed by
20 employees of the Department of Labor who are knowledgeable and
21 experienced in the occupational safety and health field and who are
22 trained in the federal standards and in the recognition of safety
23 and health hazards. The Department of Labor may employ qualified
24 persons as may be necessary to carry out this section.

25 (3) All employers shall be subject to occupational safety
26 and health inspections covering their Nebraska operations.
27 Employers shall be selected by the Commissioner of Labor for
28 inspection on the basis of factors intended to identify the

1 likelihood of workplace injuries and to achieve the most efficient
2 utilization of safety personnel of the Department of Labor. Such
3 factors shall include:

4 (a) The amount of premium paid by the employer for
5 workers' compensation insurance;

6 (b) The experience modification produced by the
7 experience rating system referenced in section ~~44-5028~~ 24 of this
8 act;

9 (c) Whether the employer is covered by workers'
10 compensation insurance under section 48-146.01;

11 (d) The relative hazard of the employer's type of
12 business as evidenced by insurance rates or loss costs filed with
13 the Director of Insurance for the insurance rating classification
14 or classifications applicable to the employer;

15 (e) The nature, type, or frequency of accidents for the
16 employer as may be reported to the Department of Insurance, the
17 Nebraska Workers' Compensation Court, or the Department of Labor;

18 (f) Workplace hazards as may be reported to the
19 Department of Insurance, the Nebraska Workers' Compensation Court,
20 or the Department of Labor;

21 (g) Previous safety and health history;

22 (h) Possible employee exposure to toxic substances;

23 (i) Requests by employers for the Department of Labor to
24 inspect their workplaces or otherwise provide consulting services
25 on a basis by which the employer will reimburse the Department of
26 Labor; and

27 (j) All other relevant factors.

28 (4) Hazards identified by an inspection shall be

1 eliminated within a reasonable time as specified by the
2 Commissioner of Labor.

3 (5) An employer who refuses to eliminate workplace
4 hazards in compliance with an inspection shall be referred to the
5 federal Occupational Safety and Health Administration for
6 enforcement.

7 (6) At the discretion of the Commissioner of Labor,
8 inspection of an employer may be repeated to ensure compliance by
9 the employer, with the expenses incurred by the Department of Labor
10 to be paid by the employer.

11 (7) The Commissioner of Labor shall adopt and promulgate
12 rules and regulations establishing a schedule of fees for
13 consultations and inspections. Such fees shall be established with
14 due regard for the costs of administering the Workplace Safety
15 Consultation Program. The cost of consultations and inspections
16 shall be borne by each employer for which these services are
17 rendered.

18 (8) There is hereby created the Workplace Safety
19 Consultation Program Cash Fund. All fees collected pursuant to the
20 Workplace Safety Consultation Program shall be remitted to the
21 State Treasurer for credit to the fund and shall be used for the
22 sole purpose of administering the program. Any money in the fund
23 available for investment shall be invested by the state investment
24 officer pursuant to the Nebraska Capital Expansion Act and the
25 Nebraska State Funds Investment Act.

26 (9) Each employer provided a consultation or inspection
27 by the Department of Labor shall retain up-to-date records for each
28 place of employment as recommended by the inspection or

1 consultation. The employer shall make such records available to
2 the Department of Labor upon request to ensure continued progress
3 of the employer's efforts to comply with the federal Occupational
4 Safety and Health Administration standards.

5 (10) Any person who knowingly operates or causes to be
6 operated a business in violation of recommendations to correct
7 serious or imminent hazards as identified by the Workplace Safety
8 Consultation Program shall be referred to the federal Occupational
9 Safety and Health Administration.

10 (11) The Attorney General, acting on behalf of the
11 Commissioner of Labor, or the county attorney in a county in which
12 a business is located or operated may apply to the district court
13 for an order against any employer in violation of this section.

14 (12) The Workplace Safety Consultation Program shall not
15 be construed to alter the duty of care or the liability of an owner
16 or a business for injuries or death of any person or damage to any
17 property. The state and its officers and employees shall not be
18 construed to assume liability arising out of an accident involving
19 a business by reason of administration of the Workplace Safety
20 Consultation Program.

21 (13) Inspectors employed by the Department of Labor may
22 inspect any place of employment with or without notice during
23 normal hours of operation. Such inspectors may suspend the
24 operation of equipment determined to constitute an imminent danger
25 situation. Operation of such equipment shall not resume until the
26 hazardous or unsafe condition is corrected to the satisfaction of
27 the inspector.

28 (14) No person with a reasonable cause to believe the

1 truth of the information shall be subject to civil liability for
2 libel, slander, or any other relevant tort cause of action by
3 virtue of providing information without malice on workplace hazards
4 or the nature, type, or frequency of accidents to the Department of
5 Insurance, the Nebraska Workers' Compensation Court, or the
6 Department of Labor.

7 (15) Safety and health inspectors employed by the
8 Department of Labor shall have the right and power to enter any
9 premise, building, or structure, public or private, for the purpose
10 of inspecting any work area or equipment. A refusal by the
11 employer of entry by a safety and health inspector employed by the
12 Department of Labor shall be a violation of this subsection. If
13 the Commissioner of Labor finds, after notice and hearing, that an
14 employer has violated this subsection, he or she may order payment
15 of a civil penalty of not more than one thousand dollars for each
16 violation. Each day of continued violation shall constitute a
17 separate violation.

18 (16) The Commissioner of Labor shall adopt and promulgate
19 rules and regulations to carry out this section.

20 Sec. 41. If any section in this act or any part of any
21 section is declared invalid or unconstitutional, the declaration
22 shall not affect the validity or constitutionality of the remaining
23 portions.

24 Sec. 42. Sections 12, 35, and 42 of this act become
25 operative on their effective date. The other sections of this act
26 become operative on January 1, 2001.

27 Sec. 43. Original sections 44-3,153, 44-2909, and
28 48-446, Reissue Revised Statutes of Nebraska, and sections 44-522

1 and 48-151, Revised Statutes Supplement, 1999, are repealed.

2 Sec. 44. The following sections are outright repealed:

3 Sections 44-4601 to 44-4607, 44-5001 to 44-5019, and 44-5021 to

4 44-5039, Reissue Revised Statutes of Nebraska, and section 44-5020,

5 Revised Statutes Supplement, 1999.